

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BECKSON MARINE, INC., a Connecticut
corporation; CAROLE A. BECKERER,
ELOISE BRADY and JOAN A. JONES,
Custodians,

Plaintiffs,

v.

NFM, INC., a Washington corporation,

Defendant.

Case No. C98-5531FDB

ORDER DENYING DEFENDANT'S
MOTION FOR STAY PENDING
REEXAMINATION

This matter is before the Court on the motion of Defendant NFM, Inc.'s motion for stay pending reexamination. The Court, having considered the motion, response, and balance of the record, finds that the motion should be denied.

I.

Defendant NFM seeks a stay of all proceedings pending a decision from the United States Patent and Trademark Office ("Patent Office") on reexamination. At the time of filing this motion, NFM's request for reexamination has not been granted. Even assuming the Patent Office grants NFM's request, this Court need not stay its proceedings pending reexamination. A stay pending

1 reexamination is within the Court's sound discretion. *Gould v. Control Laser Corp.*, 705 F.2d 1340
2 [217 USPQ 985] (Fed. Cir. 1983). Additionally, this Court and the Patent Office have different
3 functions, which are not in conflict, and may reach different conclusions on validity. *Ethicon, Inc. v.*
4 *Quigg*, 849 F.2d 1422, 1428 [7 USPQ2d 1152] (Fed. Cir. 1988), *quoting In re Etter*, 756 F.2d 852,
5 857 [225 USPQ 1] (Fed. Cir. 1985).

6 II.


7 The Court concludes that a stay is not justified in this case where, after seven years of
8 expensive and protracted litigation, this case has finally been adjudicated as to all issues except
9 damages. The patent in suit has been tested twice by the Court of Appeals for the Federal Circuit
10 and found not invalid and, in its opinion and mandate issued on August 18, 2005, found infringed by
11 Defendant. The Court's determination on damages does not preclude a reexamination proceeding
12 should that be the course the Patent Office chooses and any further delay in this action will increase
13 the cost of this litigation unnecessarily. Defendant has not made out a case of hardship in going
14 forward with this case.

15 ACCORDINGLY,

16 IT IS ORDERED:

17 (1) NFM's motion for stay pending reexamination (Dkt.#259) is **DENIED**.

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19 DATED this 20th day of September, 2005.

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21 
22 FRANKLIN D. BURGESS
23 UNITED STATES DISTRICT JUDGE
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